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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JAN 19 2006

at 8 o'clock and 06 min. PM
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 05-00161 HG
)	
Plaintiff,	)	REPLY MEMORANDUM IN
	)	SUPPORT OF DEFENDANT'S
vs.	)	MOTION FOR RECONSIDERATION
	)	OF ORDER GRANTING
JAY PADAYAO,	)	GOVERNMENT'S MOTION TO
	)	DETAIN DEFENDANT WITHOUT
	)	BAIL; CERTIFICATE OF SERVICE
Defendant.)	
_____	)	DATE: <u>January 20, 2006</u>
		TIME: <u>10:30 a.m.</u>
		JUDGE: <u>LESLIE E. KOBAYASHI</u>

TW: 3/14/06

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR
RECONSIDERATION OF ORDER GRANTING GOVERNMENT'S MOTION TO
DETAIN DEFENDANT WITHOUT BAIL

COMES NOW DEFENDANT, JAY PADAYAO, by his undersigned court-
appointed counsel, and submits his reply memorandum in support of his motion for
reconsideration of the order granting the government's motion to detain defendant
without bail, filed herein on July 11, 2005.

The government on January 19, 2006 filed an opposition memorandum to defendant's motion for reconsideration. It listed five grounds of opposition. First, it objects that the charge against defendant is a serious one with a potential mandatory minimum sentence. However, as in other cases where a mandatory term is possible, such fact is not dispositive. The question is whether there are conditions or a combination of conditions that will allow the court to grant the defendant pretrial release. For the reasons that follow, we submit such conditions exist here.

The defendant's criminal record, the government's second objection, is based principally upon defendant's actions as a juvenile when he was not yet 18. Defendant's Date of Birth is July 5, 1975. The four Escape 2 convictions pointed out by the government in 1994 and 1995 were for "escapes" from the Hawaii Youth Corrections Facility (HYCF) on January 13-21, 1993, on January 29, 1993, on February 3, 1993, and on March 20, 1993, when defendant, then a 17-year-old teenager, essentially left the facility without permission along with a number of other juveniles who found an open door. These offenses, along with other arrests for offenses when defendant was 17 years old, were packaged together to allow the family court to waive defendant to adult jurisdiction, and form the gravamen for the government's claim that defendant is an armed career criminal. The assault conviction involved an incident when defendant was 18 years old. As pointed out in defendant's motion, he has been substance abuse free. The government's objection that defendant "may use other drugs as well," like its other

objections, is bottomed primarily upon purely argumentative speculation.

The government's third objection, that there is no government commitment for a downward departure at this time is true, as it always is when there is cooperation by a defendant prior to a plea and sentencing. Based upon the feedback from the debriefing agent, however, the defendant provided substantive information meriting serious investigation and positive follow-up. Moreover, the defendant has been debriefed more than once. He first volunteered through his girlfriend to be debriefed by law enforcement without an attorney or any cooperation agreement about matters other than his case on May 4, 2005, only two weeks after the indictment was returned in this case on April 20, 2005. Defendant noted in writing on a federal waiver form that "I ask my girlfriend to get in contact with the U.S. Marshals on my own. Because I wanted to talk to them about ways that I can help myself about my Fed. Case." Clearly, he realized then, as he does now, that escape or criminal conduct is not an option. The government's objection on this point is without merit.

The government's fourth objection, that the case has been pending since June 2005, is also without merit. Whether the defendant goes to trial or not is not the issue. As pointed out above, he began cooperating in May 2005. As to whether he should plead guilty, the record is clear that defendant and his prior counsel had a falling out about the case and he is in the process of determining how he should proceed with his case. The court found good cause to allow prior counsel to withdraw. Since then defendant has

continued his cooperation. The government's objection again is based upon pure speculation.

Finally, the government merely repeats itself about the potential punishment in this case in its fifth objection, but does not dispute that defendant has training and job opportunities should he be released. Indeed, defendant's parents and other family members would not be supporting him if they did not believe his attitude had changed for the positive. Defendant has strong family ties in Hawaii. He has lived with his girlfriend for a number of years and they have two children, one his 2-year-old son, and the other his 6-year-old stepson, with all of whom defendant is strongly bonded. He will be under 24-hour supervision, whether at home, doing training, or at work.

In summary, there are more than adequate conditions and compelling reasons that would justify the release defendant pending the disposition of this case.

Dated: Honolulu, Hawaii, January 19, 2006.

A handwritten signature in cursive script, reading "Richard S. Kawana", written in dark ink.

RICHARD S. KAWANA
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 05-00161 HG
)	
Plaintiff,	)	CERTIFICATE OF SERVICE
)	
vs.)	
)	
JAY PADAYAO,)	
)	
)	
Defendant.)	
_____)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was duly served by fax on January 19, 2006 and by hand delivery on January 20, 2006, as follows:

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DATED: Honolulu, Hawaii, January 19, 2006.


RICHARD S. KAWANA